

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dillon Bezehertny	Team: Squad #11	CCRB Case #: 202204823	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/22/2022 1:10 PM	Location of Incident: Union Turnpike and 173rd Avenue	18 Mo. SOL 1/22/2024	Precinct: 107		
Date/Time CV Reported Fri, 07/22/2022 6:34 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 07/22/2022 6:34 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Brian Dietzel	11091	934770	107 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Catherine Hernandez	09597	933846	107 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Brian Dietzel	Discourtesy: Police Officer Brian Dietzel spoke discourteously to § 87(2)(b)	
B . PO Brian Dietzel	Abuse: Police Officer Brian Dietzel issued an unlawful summons to § 87(2)(b)	
C . PO Brian Dietzel	Abuse: Police Officer Brian Dietzel issued retaliatory summonses to § 87(2)(b)	
D . PO Brian Dietzel	Abuse: Police Officer Brian Dietzel issued an unlawful summons to § 87(2)(b)	
E . PO Brian Dietzel	Abuse: Police Officer Brian Dietzel issued a retaliatory summons to § 87(2)(b)	
F . PO Brian Dietzel	Abuse: Police Officer Brian Dietzel provided a false official statement against § 87(2)(b)	

Case Summary

On July 22, 2022, § 87(2)(b) filed this complaint online with CCRB.

At approximately 1:10 p.m. on July 22, 2022, § 87(2)(b) was driving along Union Turnpike in Queens with his fiancé in the passenger seat and his two brothers in the rear when he observed a marked SUV, operated by Police Officer Brian Dietzel of the 107th Precinct, proceed through a red light without activating its lights or sirens. § 87(2)(b) waited at the traffic signal, proceeding through it once it turned green, pulling up to a stop parallel to the police vehicle such that § 87(2)(b) car was on the right side. § 87(2)(b) told PO Dietzel and Police Officer Catherine Hernandez, who was sitting on the passenger seat, that they just illegally ran a red light, at which time PO Dietzel allegedly told § 87(2)(b) “I don’t give a shit. Matter of fact, pull over” (**Allegation A: Discourtesy**, § 87(2)(g)). § 87(2)(b) pulled over near the intersection of Union Turnpike and 173rd Avenue. When § 87(2)(b) asked the reason for the stop, PO Dietzel told him that he was not wearing a seatbelt. § 87(2)(b) provided his ID, registration for his rental vehicle, and a PBA courtesy card which PO Dietzel immediately gave back to § 87(2)(b) indicating he did not want it. PO Dietzel prepared five New York State Vehicle and Traffic Law summonses – one valid for driving without a seatbelt, three retaliatory for horn used in absence of danger, dirty or covered license plate, and failure to signal lane change, as well as a retaliatory and unlawful summons for rear passengers without a seatbelt - gave § 87(2)(b) the summonses and his documents, requested and then kept § 87(2)(b) PBA card, told § 87(2)(b) to have a good day, turned around, and started walking towards the police vehicle (**Allegation B: Abuse of Authority**, § 87(2)(g)). **Allegation C: Abuse of Authority**, § 87(2)(g). As PO Dietzel was walking away, § 87(2)(b) allegedly asked PO Dietzel, “Officer, why are you being such a dick?” PO Dietzel and PO Hernandez both rushed to § 87(2)(b) driver-side window, asking him for his ID. § 87(2)(b) provided his ID, and PO Dietzel issued him a criminal court summons for disorderly conduct (**Allegation D: Abuse of Authority**, § 87(2)(g)). **Allegation E: Abuse of Authority**, § 87(2)(g). **Allegation F: Abuse of Authority**, § 87(2)(g).

On August 11, 2022, CCRB received body-worn camera footage for Police Officer Dietzel (**Board Review 01**) and Police Officer Hernandez.

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Brian Dietzel spoke discourteously to § 87(2)(b).

PO Dietzel’s BWC (**Board Review 01**) starts at 13:00:01 and ends at 13:39:58. At 00:34, PO Dietzel and PO Hernandez appear to be stopped at a traffic signal when § 87(2)(b) pulls up to the right of the police vehicle and begins speaking to the officers. As there is no audio, it is unclear what is said. At 00:47, PO Dietzel presses a button on the dashboard, at which point § 87(2)(b) proceeds to pull over. At 01:00, audio begins.

At approximately 1:10 p.m. § 87(2)(b) (**Board Review 02**) was driving east in the right-most lane on Union Turnpike, which has three lanes of traffic in each direction, with his fiancée and two brothers. Neither § 87(2)(b) nor any of the occupants of his vehicle were wearing seatbelts. While waiting at a redlight, § 87(2)(b) saw a marked police vehicle proceed through the same redlight while driving in the center lane, going in the same direction, without activating its lights or sirens. When that traffic signal turned green, § 87(2)(b) proceeded straight through the intersection and stopped his car directly to the right of the police vehicle, which was waiting in

traffic at the next redlight. § 87(2)(b) waved at PO Dietzel and PO Hernandez until they rolled down their front passenger-side window. § 87(2)(b) told the officers they just broke the law by running a redlight. PO Dietzel responded, "I don't give a shit. Matter of fact, pull over."

§ 87(2)(b) declined to provide the identities of, or contact information for, his fiancé and two brothers.

PO Dietzel (**Board Review 03**) did not recall telling § 87(2)(b) "I don't give a shit" or otherwise using any profanity during the incident.

PO Hernandez (**Board Review 04**) did not hear PO Dietzel tell § 87(2)(b) "I don't give a shit."

The officers' testimony regarding this allegation is directly oppositional to § 87(2)(b) testimony. That being said, because of the one-minute audio buffer standard to Department body-worn cameras, the portion of the incident where the comment allegedly takes place does not have any accompanying audio recording. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Brian Dietzel issued an unlawful summons to § 87(2)(b).

It is undisputed that the PO Dietzel issued § 87(2)(b) a summons for rear passenger failing to wear a seat belt properly, the validity of which is in dispute (**Board Review 05**).

At 23:37 of PO Dietzel's BWC (**Board Review 01**), PO Dietzel exits the police vehicle and returns to § 87(2)(b) driver-side window. At 23:48, PO Dietzel asks § 87(2)(b) "How old are your rear passengers?" § 87(2)(b) responds, "My rear passengers are over the age of 20." PO Dietzel says, "I didn't ask you what they're over I asked you how old they are." § 87(2)(b) says, "20, 21." PO Dietzel responds, "Okay." None of the occupants of § 87(2)(b) vehicle objected to, or in any way corrected, § 87(2)(b) identifying the rear passengers as 20 years old and 21 years old. PO Dietzel does not take any investigatory steps to verify the ages of the rear passengers provided by § 87(2)(b) then issues § 87(2)(b) a summons for "no seat belts in the rear" at 24:54.

§ 87(2)(b) (**Board Review 02**) declined to provide to the CCRB the identities of, or contact information for, his fiancé and two brothers. Neither § 87(2)(b) brothers nor his fiancé had any interaction with PO Dietzel or PO Hernandez during the incident. None of the occupants of § 87(2)(b) vehicle were wearing seatbelts.

PO Dietzel (**Board Review 03**) observed that the rear passengers in § 87(2)(b) car were not wearing seatbelts.

PO Hernandez (**Board Review 04**) noted § 87(2)(b) was issued a summons for his passengers not wearing a seatbelt.

PO Dietzel issued B summons § 87(2)(b) (**Board Review 05**) for violation of code § 87(2)(b) a back seat passenger between the ages of eight and fifteen that fails to wear a seat belt properly.

No person shall operate a motor vehicle in this state unless any back seat passenger under the age of sixteen is restrained by a safety belt *New York State Vehicle & Traffic Law § 1229-C1C (Board Review 06)*.

At 23:37, PO Dietzel's BWC (**Board Review 01**) captures that, prior to issuing B summons § 87(2)(b) (**Board Review 05**) for a back seat passenger between the ages of eight and fifteen not wearing a seatbelt, PO Dietzel asked § 87(2)(b) how old his rear passengers were. § 87(2)(b) told PO Dietzel that his rear passengers were ages twenty and twenty-one respectively, though the passengers are not visible in this video. PO Dietzel acknowledged § 87(2)(b) answer but did not take any steps to verify the ages of the back seat passengers before issuing the criminal court summons which contradicted § 87(2)(b) answer.

Based on the above, PO Dietzel did not observe the infraction he cited on B summons § 87(2)(b) and issued the summons to § 87(2)(b) for that infraction regardless. § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Brian Dietzel issued retaliatory summonses to § 87(2)(b)

As noted above in allegation A, § 87(2)(b) (**Board Review 02**) stated that this interaction began because § 87(2)(b) observed PO Dietzel drive through a red light without activating his vehicle's lights or sirens, whereupon § 87(2)(b) waved at PO Dietzel while stopped in traffic at the following intersection to inform PO Dietzel that he had just broken the law by driving through a red light. In response, PO Dietzel instructed § 87(2)(b) to pull over.

At 01:13 of PO Dietzel's BWC (**Board Review 01**), § 87(2)(b) asks PO Dietzel the reason for the stop, to which he replies, "No seatbelt. And you also have an illegal license plate cover... it's obstructing the plate. And also, I believe your rear passengers don't have seatbelts on either." At 05:42, while inside of the police vehicle, PO Dietzel tells PO Hernandez that he is not going to "get credit" for the summonses but "[he] just want[s] to write § 87(2)(b) summonses." At 17:36, PO Dietzel, still in the police vehicle, reads to PO Hernandez the summonses he has prepared for § 87(2)(b) thus far: obstructed plate, improper use of horn (not for danger), no seatbelt (driver), no seatbelt (rear passengers), failure to signal.... PO Dietzel asks PO Hernandez if she can think of anything else twice. At 18:46, PO Dietzel tells PO Hernandez, "I think 5 might get the point across." At 23:17, PO Hernandez says something to PO Dietzel about § 87(2)(b) PBA card, but it is unintelligible. PO Dietzel asks PO Hernandez, "So I gotta take [the PBA card] and give all these [summonses]?" PO Hernandez tells him, "Of course. You have to learn respect. Respect. That was very disrespectful; how dare you?"

§ 87(2)(b) (**Board Review 02**), who was still in the right-most lane when PO Dietzel instructed him to pull over, veered right towards the curb, pulling over immediately. PO Dietzel approached § 87(2)(b) front driver-side window and asked for § 87(2)(b) driver's license, registration, and insurance. § 87(2)(b) provided license and registration for the vehicle but told PO Dietzel that he did not have the insurance given the vehicle was a rental. § 87(2)(b) also gave PO Dietzel a PBA courtesy card which PO Dietzel briefly inspected and then dropped onto § 87(2)(b) lap, rejecting it. Officers returned to their vehicle for thirty to forty minutes, after which PO Dietzel reappeared by § 87(2)(b) front driver-side window to hand him five summonses.

PO Dietzel (**Board Review 03**) was driving eastbound along Union Turnpike on his way to an

assignment when he spotted § 87(2)(b) vehicle ahead making lane changes without signaling. Wanting to respond to the assignment quickly, PO Dietzel decided to ignore § 87(2)(b) traffic violations, instead proceeding straight through a red light after determining it was safe to do so. At the next light, which was also red, PO Dietzel waited in traffic. § 87(2)(b) came "speeding up Union Turnpike, honking his horn," pulling up to the right of the police vehicle. § 87(2)(b) told officers they had just broken the law. As § 87(2)(b) spoke, PO Dietzel observed he was not wearing a seatbelt and told him to pull over. PO Dietzel prepared New York State Vehicle and Traffic Law summonses for § 87(2)(b) who "aggressively" snatched each summons from PO Dietzel, asking PO Dietzel "what else" after each summons.

PO Hernandez (**Board Review 04**) was consistent with PO Dietzel without any exceptions.

PO Dietzel issued § 87(2)(b) B summons § 87(2)(b) for driving while failing to wear a seat belt (**Board Review 07**), B summons § 87(2)(b) (**Board Review 08**) for dirty or improperly covered license plate, B summons § 87(2)(b) (**Board Review 09**) for failure to signal lane change, and B summons § 87(2)(b) (**Board Review 10**) for horn used in absence of danger.

No person shall operate a motor vehicle unless such person is restrained by a safety belt approved by the commissioner *New York State Vehicle & Traffic Law § 1229-C3* (**Board Review 06**). Number plates shall be kept clean and, in a condition, to be easily readable and shall not be covered by glass or any plastic *New York State Vehicle & Traffic Law § 402* (**Board Review 24**). No person shall move right or left upon a roadway signal unless and until such movement can be made with reasonable safety and without giving an appropriate signal *New York State Vehicle & Traffic Law § 1163* (**Board Review 25**). No person shall operate or use or cause to be operated or used any claxon installed on a motor vehicle, except as a sound signal of imminent danger (**Board Review 26**).

Summonses with a lawful basis may still be improper and wrongful if, but for the officer's improper motive, the summonses would not have been issued *NYPD Disciplinary Matix* (**Board Review 11**).

PO Dietzel testified that, prior to stopping § 87(2)(b) he observed § 87(2)(b) commit traffic violations. PO Dietzel opted to use discretion, ignoring the infractions so that he could respond to an assignment. It was only after § 87(2)(b) told PO Dietzel he had broken the law by running a red light that PO Dietzel decided to pull over § 87(2)(b) vehicle. While PO Dietzel may have had observed traffic violations that could have resulted in the lawful issuance of the summonses cited above to § 87(2)(b) his BWC (**Board Review 01**) captures him candidly telling PO Hernandez at 05:42 that he is not going to "get credit" for the summonses but "[he] just want[s] to write § 87(2)(b) summonses;" at 18:46, PO Dietzel tells PO Hernandez, "I think 5 might get the point across." In this case, the BWC footage shows that PO Dietzel's motivation to issue the summonses to § 87(2)(b) was not to uphold the rules and regulations of the New York State Vehicular Traffic Laws, but to issue summonses as an act of retribution for telling PO Dietzel that he had broken the law by driving through a red light. § 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Brian Dietzel issued an unlawful summons to § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Brian Dietzel issued a retaliatory summons to § 87(2)(b)

It is undisputed that PO Dietzel issued § 87(2)(b) a criminal court summons for disorderly conduct (**Board Review 14**), the validity and propriety of which is in dispute.

PO Dietzel's BWC (**Board Review 01**) does not depict any violent, threatening, or tumultuous behavior on behalf of § 87(2)(b). § 87(2)(b) conduct did not appear to attract the attention of onlookers. At no point did civilians other than § 87(2)(b) himself become involved in the interaction in any capacity. At 29:20, PO Dietzel tells PO Hernandez that, "Usually we can't write [disorderly conduct summonses] if it's just against us." At 25:22, PO Dietzel, on his way back to his RMP, having given all summonses to § 87(2)(b) and having said, "Have a good day," turns around, asking § 87(2)(b) "What'd you say?" At 25:28, PO Dietzel and PO Hernandez each walk up to § 87(2)(b) driver-side window and ask him to repeat what he just said. PO Dietzel asks for § 87(2)(b) ID back, saying § 87(2)(b) must want more summonses. § 87(2)(b) says he does not want more summonses. PO Hernandez yells, "Give us the ID. Give us the ID. Give us the ID. Give us the ID." At 26:00, § 87(2)(b) gives his ID to PO Dietzel. PO Dietzel and PO Hernandez take the ID back to their RMP. At 26:20, PO Hernandez asks PO Dietzel if § 87(2)(b) has done enough to receive a disorderly conduct summons. At 29:20, PO Dietzel tells PO Hernandez that, "Usually we can't write [disorderly conduct summonses] if it's just against us." PO Hernandez says that he is causing dangerous conditions by obstructing the turning lane, "because he won't move. He's too busy fighting." At 30:40, PO Dietzel asks PO Hernandez what § 87(2)(b) said, to which she responds, "I hope something happens to you, you fucking cocksucker." At 31:45, PO Hernandez says, "Oh you have his phone number now because he called you" and laughs. At 33:08, PO Dietzel tells PO Hernandez, "I won't tell you what he reminds me of until the cameras are off." At 38:15, PO Dietzel exits his RMP and walks towards § 87(2)(b) driver-side window. At 38:37, PO Dietzel gives § 87(2)(b) a criminal summons for disorderly conduct and tells him when and where to report to court.

After handing § 87(2)(b) (**Board Review 02**) the summonses, officers began walking back to their RMP, at which time § 87(2)(b) asked PO Dietzel, "Officer, why are you being such a dick?" Officers immediately turned around, both approaching the front driver-side window of § 87(2)(b) car. Officers yelled at § 87(2)(b) to give them his ID, which he provided. PO Dietzel also asked for § 87(2)(b) PBA card, which was also provided. Officers returned to their car for approximately twenty minutes, reapproaching to give § 87(2)(b) a criminal summons for disorderly conduct. § 87(2)(b) stated that his demeanor was calm and collected throughout the interaction.

Once all five summonses were in § 87(2)(b) possession, PO Dietzel (**Board Review 03**) told § 87(2)(b) to have a good day and began walking back to his RMP, at which point PO Dietzel concluded the stop. As officers walked back to their RMP, they faintly heard § 87(2)(b) say something to officers. PO Dietzel could not recall exactly what was said but stated it was something to the effect of "I hope you get shot dead." PO Dietzel stated that § 87(2)(b) never made a direct threat to officers. PO Dietzel reapproached § 87(2)(b) and asked him to repeat what he had just said, which § 87(2)(b) refused to do. PO Dietzel requested § 87(2)(b) ID once more and prepared a criminal summons for disorderly conduct. In his interview with CCRB, PO Dietzel noted § 87(2)(b) was "extremely disrespectful" towards officers during the incident, which he gleaned from § 87(2)(b) tone, and the fact § 87(2)(b) called PO Dietzel "a fucking asshole" at some point during the interaction. PO Dietzel did not recall any traffic or nearby pedestrians stopping to observe the interaction between PO Dietzel and § 87(2)(b). PO Dietzel reviewed the narrative portion of criminal court summons § 87(2)(b) (**Board Review 10**) and stated that, aside from the statement regarding wishing officers were shot dead, § 87(2)(b) did not say or do anything that was violent, threatening, or tumultuous. In his second interview with CCRB, PO Dietzel (**Board Review 13**) reviewed his BWC (**Board Review 01**) from 23:33 until 25:19. PO Dietzel confirmed that this portion of footage was what he was referring to when he said § 87(2)(b) was flailing his arms and yanking the summonses out of his hand. PO Dietzel stated

that he considered the way in which § 87(2)(b) grabbed the summonses from him to be tumultuous and aggressive. PO Dietzel stated that he believed the manner in which § 87(2)(b) took the summonses was aggressive, but it did not make him feel unsafe at the time. PO Dietzel indicated that the narrative on criminal court summons § 87(2)(b) indicates that the violations of subsection 1 of New York State Penal Law 240.20 occurred after the initial car stop had concluded. PO Dietzel stated that, "It didn't really get violent or threatening until his statements towards the end."

PO Hernandez (**Board Review 04**) did not hear § 87(2)(b) make a direct threat to officers. § 87(2)(b) never posed a physical threat to officers. PO Hernandez did not believe there were any individuals who appeared to stop and observe the incident as onlookers. In her second interview with CCRB, PO Hernandez (**Board Review 14**) stated that § 87(2)(b) comment towards officers and the way he was flailing his arms a lot throughout the incident, could constitute violent, threatening, or tumultuous behavior. PO Hernandez stated that she personally did not interpret those actions as violent or tumultuous or threatening.

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he engages in fighting or in violent, tumultuous, or threatening behavior *NYS Penal Law § 240.20 (Board Review 15)*. In *People v. Baker*, 20 N.Y.3d 354 (2013), the Court established that a finding of disorderly conduct requires that the conduct in question includes an element of public harm and held that isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely satisfy the requisite public harm element (**Board Review 27**).

§ 87(2)(g)

§ 87(2)(b) it is undisputed that there were no apparent onlookers of this incident. § 87(2)(b) never made a direct threat to officers. PO Dietzel's BWC captures PO Hernandez repeating to PO Dietzel the statement § 87(2)(b) made to officers, saying, "I hope something happens to you, you fucking cocksucker." This statement, directed purely at officers § 87(2)(g)

§ 87(2)(g) In PO Dietzel's BWC (**Board Review 01**), he acknowledges that he is aware of this fact when he says to PO Hernandez, at 29:20, that, "Usually we can't write [disorderly conduct summonses] if it's just against us." § 87(2)(b) did not make any violent, threatening, or tumultuous statements during this encounter, and there was no public element regarding this incident. As such, PO Dietzel did not witness § 87(2)(b) commit a violation of Penal Law 240.20 as he indicated in criminal court summons § 87(2)(b) (**Board Review 14**) and testified to in his CCRB interviews § 87(2)(g)

§ 87(2)(g)

Furthermore, PO Dietzel's intent while issuing this criminal court summons is unambiguously retaliatory. It is undisputed that the initial vehicle stop was concluded immediately prior to § 87(2)(b) statement to the officers, which was the only event between the end of the first stop and the beginning of the second, making it clear the stop was reinitiated by PO Dietzel in direct response to the statement § 87(2)(b) made based on the content of § 87(2)(b) speech which challenged officers' authority in saying either, "Officer, why are you being such a dick" as he alleged or, "I hope something happens to you, you fucking cocksucker" as PO Hernandez restated in PO Dietzel's BWC. In doing so, PO Dietzel chose to extend the encounter, which had, as he and PO Hernandez testified, ended at around twenty-five minutes. Because it was reinitiated, the encounter lasted a total of forty minutes.

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Brian Dietzel provided a false official statement against § 87(2)(b) in criminal court summons § 87(2)(b)

PO Dietzel's BWC (**Board Review 01**) does not depict any violent, threatening, or tumultuous behavior on behalf of § 87(2)(b) is never captured "screaming [or] flailing [his] arms" (**Board Review 01; Board Review 12**). § 87(2)(b) does not yell during the encounter until after PO Dietzel and PO Hernandez request his ID for the second time, PO Dietzel telling § 87(2)(b) "You must want more [summonses]."

§ 87(2)(b) stated that his demeanor was calm and collected through the interaction (**Board Review 02**).

In his second interview with CCRB, PO Dietzel (**Board Review 13**) reviewed his BWC (**Board Review 01**) from 23:33 until 25:19. PO Dietzel confirmed that this portion of footage was what he was referring to when he said § 87(2)(b) was flailing his arms and yanking the summonses out of his hand. PO Dietzel stated that he considered the way in which § 87(2)(b) grabbed the summonses from him to be tumultuous and aggressive. PO Dietzel stated that he believed the way § 87(2)(b) took the summonses was aggressive, but it did not make him feel unsafe at the time. PO Dietzel (**Board Review 03**) noted § 87(2)(b) yelled at officers in reference to the comment § 87(2)(b) made towards officers following the conclusion of the first stop. PO Dietzel stated that he was unable to hear § 87(2)(b) statement clearly on scene.

In her second interview with CCRB, PO Hernandez (**Board Review 14**) stated that § 87(2)(b) comment towards officers and the way he was flailing his arms a lot could constitute violent, threatening, or tumultuous behavior. PO Hernandez stated that she personally did not interpret those actions as violent or tumultuous or threatening. PO Hernandez (**Board Review 04**) noted she could not hear the comment well because of noise from the intersection. PO Hernandez stated that § 87(2)(b) was "screaming" at officers throughout the interaction.

The narrative section of criminal court summons § 87(2)(b) (**Board Review 12**) reads as follows: "Defendant did engage in violent and tumultuous threatening behavior by yelling screaming flailing arms and wishing death upon the police officers after a motor vehicle stop."

According to Administrative Guide 304-10, members of the service are prohibited from intentionally making a false official statement (**Board Review 17**). Members of the service have an obligation to review documents before signing, or otherwise verifying, their accuracy (**Board Review 17**).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

PO Dietzel's BWC (**Board Review 01**) shows that the way § 87(2)(b) spoke "with his hands" or received his summonses could in no reasonable way be interpreted as violent, threatening, or tumultuous. PO Hernandez stated that she did not interpret § 87(2)(b) arm movements as

violent, threatening, or tumultuous. PO Hernandez never considered § 87(2)(b) a threat to officers' safety during the incident. PO Dietzel did not feel unsafe because of the movements he cited § 87(2)(b) having made during the encounter. Furthermore, PO Dietzel's BWC (**Board Review 01**) never captures § 87(2)(b) "screaming [or] flailing [his] arms." While PO Dietzel (**Board Review 03**) noted that § 87(2)(b) yelled at officers as they walked away, the comment is inaudible on BWC and, based on their respective testimonies, was unclear to PO Dietzel and PO Hernandez in person as well, calling into question how loud § 87(2)(b) was when issuing the comment. Additionally, prior to PO Dietzel and PO Hernandez requesting § 87(2)(b) ID a second time and PO Dietzel telling § 87(2)(b) "You must want more [summons],", § 87(2)(b) was not captured yelling at officers in any capacity. § 87(2)(b) does begin to yell at officers once it is clear he will be given a sixth summons, though PO Dietzel had made the determination to issue the summons before that point, evident given that issuing the summons was the sole reason he requested § 87(2)(b) ID the second time. Furthermore, the purpose of the narrative portion of a criminal court summons is to explain and justify issuing said summons. PO Dietzel falsely documented that § 87(2)(b) "did engage in violent and tumultuous threatening behavior by yelling[,] screaming[,] and] flailing arms" to grant the appearance of legitimacy to criminal court summons § 87(2)(b) in effect attempting to conceal the unlawful summons.

§ 87(2)(g) BWC never captures § 87(2)(b) "screaming [or] flailing his arms," and § 87(2)(g) BWC shows § 87(2)(b) does not yell at officers until after PO Dietzel made the determination to write the disorderly conduct summons. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 20**).
- Police Officer Brian Dietzel has been a member of service for 18 years and has been a subject in 10 CCRB complaints and 28 allegations, of which 2 allegations were substantiated:
 - CCRB Case 202007141 involved substantiated allegations of a stop and failure to obtain language interpretation services against PO Dietzel. The Board recommended Command Discipline B for both allegations; the NYPD has not yet imposed discipline. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- On August 18, 2022, this case was sent to mediation and on September 12, 2022, the case was returned to investigation as Police Officer Brian Dietzel declined to mediate.
- As of October 11, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**Board Review 22**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 12

Investigator: Dillon Bezehertny Investigator Bezehertny 10/16/2023

	Signature	Print Title & Name	Date
Squad Leader:	<u>Edwin Pena</u> Signature	<u>IM Edwin Pena</u> Print Title & Name	<u>10/16/2023</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date